

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANDI TAHIRAJ,

Plaintiff

v.

INTACT INSURANCE GROUP USA LLC,
et al.,

Defendants

Case No.: 2:24-cv-00568-APG-NJK

**Order Granting in Part ASIC's Motion for
Judgment on the Pleadings, Ordering
Arbitration, and Denying as Moot ASIC's
Motion for Summary Judgment**

[ECF Nos. 17, 20]

Plaintiff Andi Tahiraj suffered injuries and damages in a car crash while driving for ride-share company Uber. Atlantic Specialty Insurance Company (ASIC) insured Tahiraj under a group insurance policy Uber made available to its drivers. ASIC allegedly denied coverage for Tahiraj's damages, so he is suing ASIC for declaratory relief, breach of contract, and bad faith.

ASIC moves for judgment on the pleadings, arguing that Tahiraj's claims are time-barred under the insurance contract's terms. Alternatively, ASIC argues that Tahiraj must arbitrate his claims. ASIC also moves for summary judgment, raising the same time-bar and arbitration arguments as well as substantive arguments that Tahiraj is not entitled to coverage. Tahiraj responds that the time-bar and arbitration provisions are unconscionable under this contract of adhesion, and that the time limitation is tolled while the claim process is resolved. Because Tahiraj is bound by the arbitration clause, I grant ASIC's motion in part and order the parties to arbitrate their dispute. I deny as moot ASIC's motion for summary judgment.

I. LIMITATION PERIOD

A party may move for judgment on the pleadings "[a]fter the pleadings are closed[,] but early enough not to delay trial." Fed. R. Civ. P. 12(c). "[A] Rule 12(c) motion is functionally

1 identical to a Rule 12(b)(6) motion,” so “the same standard of review applies to motions brought
2 under either rule.” *Gregg v. Haw. Dep’t of Pub. Safety*, 870 F.3d 883, 887 (9th Cir. 2017)
3 (simplified). In addition to the complaint, I may consider documents incorporated into the
4 complaint by reference and matters of which I may take judicial notice. *Tellabs, Inc. v. Makor*
5 *Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). “A judgment on the pleadings is properly
6 granted when, taking all the allegations in the pleadings as true, the moving party is entitled to
7 judgment as a matter of law.” *Gregg*, 870 F.3d at 887 (quotation omitted). Consequently, I must
8 determine whether the complaint contains “sufficient factual matter . . . to state a claim for relief
9 that is plausible on its face.” *Harris v. Orange Cnty.*, 682 F.3d 1126, 1131 (9th Cir. 2012)
10 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

11 ASIC attached a full copy of the insurance policy to its motion. Because Tahiraj alleges
12 breach of this contract and does not argue that I should not consider the policy, I deem it
13 properly incorporated by reference in the complaint. The policy’s “Suit Against Us” provision
14 states that no action may be brought under the policy until 60 days after written proof of loss has
15 been sent to ASIC and must commence within three years of the date the proof of loss is
16 submitted. ECF No. 17-1 at 22.

17 Parties in Nevada may contractually modify a limitation period to be shorter than the
18 statutory limitation, provided that there is “no statute to the contrary” and the shorter period is
19 “reasonable.” *Holcomb Condo. Homeowners’ Ass’n, Inc. v. Stewart Venture, LLC*, 300 P.3d 124,
20 128 (Nev. 2013). However, the limitation “period will be tolled from the time [Tahiraj] gave
21 notice of the loss until [ASIC] formally denies liability.” *Clark v. Truck Ins. Exch.*, 598 P.2d 628,
22 629 (Nev. 1979). ASIC asserts that it is entitled to judgment because the complaint states that it
23 “improperly den[ied] coverage to Plaintiff.” ECF No. 1-1 at 3. However, the complaint does not

1 state when ASIC denied Tahiraj's claim and thus began the limitation period. Although ASIC
 2 may ultimately be correct, I cannot say from the pleadings and incorporated documents that
 3 Tahiraj's suit is time-barred. *See United States v. Page*, 116 F.4th 822, 825-26 (9th Cir. 2024) (I
 4 may dismiss on statute of limitations grounds only if "it appears beyond doubt that the plaintiff
 5 can prove no set of facts that would establish the timeliness of the claim." (quotation omitted)). I
 6 therefore deny ASIC's motion on that ground.

7 **II. ARBITRATION**

8 The Federal Arbitration Act (FAA) "establishes a national policy favoring arbitration
 9 when the parties contract for that mode of dispute resolution." *Preston v. Ferrer*, 552 U.S. 346,
 10 349 (2008). Section 2 of the FAA provides that an arbitration agreement "shall be valid,
 11 irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the
 12 revocation of any contract." 9 U.S.C. § 2. Accordingly, a party seeking to compel arbitration
 13 "has the burden under the FAA to show (1) the existence of a valid, written agreement to
 14 arbitrate; and, if it exists, (2) that the agreement to arbitrate encompasses the dispute at issue."
 15 *Ashbey v. Archstone Prop. Mgmt., Inc.*, 785 F.3d 1320, 1323 (9th Cir. 2015).

16 To determine if parties have agreed to arbitrate, I "apply general state-law principles of
 17 contract interpretation, while giving due regard to the federal policy in favor of arbitration by
 18 resolving ambiguities as to the scope of arbitration in favor of arbitration." *Goldman, Sachs &*
 19 *Co. v. City of Reno*, 747 F.3d 733, 742 (9th Cir. 2014) (quotation omitted). A nonsignatory to
 20 the contract "may be obligated to arbitrate if so dictated by the ordinary principles of contract
 21 and agency." *RUAG Ammotec GmbH v. Archon Firearms, Inc.*, 538 P.3d 428, 434 (Nev. 2023)
 22 (en banc) (quotation omitted). Nevada recognizes five theories to bind a nonsignatory:
 23 "1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter ego; and

1 5) estoppel.” *Id.* (quotation omitted). “Under a theory of estoppel, a nonsignatory is estopped
2 from refusing to comply with an arbitration clause when [he] receives a ‘direct benefit’ from a
3 contract containing an arbitration clause.” *Truck Ins. Exch. V. Palmer J. Swanson, Inc.*, 189 P.3d
4 656, 661 (Nev. 2008) (quotation omitted).

5 ASIC contends that Tahiraj’s claims are covered by the arbitration provision and that he
6 is estopped from refusing to arbitrate. Tahiraj responds that the arbitration clause is
7 unconscionable because the insurance policy is a contract of adhesion, and he did not know
8 about the arbitration clause until after he had filed his claim.

9 The ASIC policy’s arbitration provision states that “[a]ny contest to a claim denial and/or
10 any dispute in connection with a claim under this Policy will be settled by arbitration
11 administered by the American Arbitration Association in accordance with its Commercial
12 Arbitration Rules” ECF No. 17-1 at 22. The arbitration provision “permanently bars the
13 institution of any individual or class action lawsuit brought by the Insured Person or
14 beneficiary.” *Id.* Because Tahiraj is claiming a benefit under the ASIC policy, he is estopped
15 from refusing to arbitrate unless he can assert any “generally applicable contract defenses, such
16 as fraud, duress or unconscionability” to invalidate it. *See AT&T Mobility LLC v. Concepcion*,
17 563 U.S. 333, 339 (2011) (quotation omitted). He does not dispute that his claim otherwise falls
18 within the scope of the arbitration provision.

19 I need not “enforce a contract, or any clause of a contract, including an arbitration clause
20 that is unconscionable.” *Burch v. Second Jud. Dist. Ct. of State ex rel. Cnty. of Washoe*, 49 P.3d
21 647, 649 (Nev. 2002). “Generally, both procedural and substantive unconscionability must be
22 present in order for a court to exercise its discretion to refuse to enforce a contract or clause as
23 unconscionable.” *Id.* at 650. Tahiraj argues that the arbitration provision is procedurally

1 unconscionable because he merely opted into coverage from Uber without even knowing what
2 company would provide the coverage or the specific terms such as arbitration. *See* ECF No. 18-1
3 (showing screenshots of coverages provided by Uber group policy). Tahiraj also asserts that he
4 was required to obtain certain insurance coverages and was offered Uber’s group policy with no
5 opportunity to negotiate its terms, including the limitation period and arbitration provisions. ECF
6 No. 18 at 13.

7 But even if I were to embrace Tahiraj’s procedural unconscionability argument, his only
8 argument that the arbitration provision is substantively unconscionable is that it “proposes an
9 absolute waiver of any individual lawsuit, as well as all abrogation of [his] constitutional right to
10 trial by jury.” *Id.* at 9-10. Such consequences are inherent to binding arbitration, and finding
11 them to be grounds for unconscionability would “wholly eviscerate arbitration agreements.” *See*
12 *Concepcion*, 563 U.S. at 341-43. The Supreme Court of the United States rejected a similar
13 argument when it noted examples of “devices and formulas” states might use to declare
14 arbitration against public policy, including rules “classifying as unconscionable arbitration
15 agreements that fail to abide by the federal Rules of Evidence, or that disallow an ultimate
16 disposition by a jury.” *Id.* at 342. Such state law rules are not covered by the FAA’s saving
17 clause preserving contract defenses because these rules would “stand as an obstacle to the
18 accomplishment of the FAA’s objectives.” *Id.* at 343.

19 The arbitration provision here simply requires disputes to be arbitrated by the American
20 Arbitration Association at the nearest office to the injured person or beneficiary and to be
21 decided in accordance with its Commercial Arbitration Rules. ECF No. 17-1 at 22. Tahiraj has
22 not identified any unfair or one-sided provisions intended to favor ASIC. Tahiraj thus has failed
23 to show substantive unconscionability. Tahiraj is bound by the arbitration provision because he

1 is attempting to claim benefits under the ASIC policy, and the provision is not unconscionable.
2 Therefore, I grant in part ASIC's motion for judgment on the pleadings to compel arbitration.

3 **III. CONCLUSION**

4 I THEREFORE ORDER that Atlantic Specialty Insurance Company's motion for
5 judgment on the pleadings (**ECF No. 17**) is **GRANTED in part**. I grant ASIC's motion to
6 compel arbitration.

7 I FURTHER ORDER that Atlantic Specialty Insurance Company's motion for summary
8 judgment (**ECF No. 20**) is **DENIED** as moot.

9 I FURTHER ORDER that this case is **STAYED** pending arbitration. The parties must
10 file a status report by January 8, 2026 or within 30 days of completion of the arbitration. The
11 parties must file status reports every six months thereafter.

12 DATED this 12th day of June, 2025.

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16 ANDREW P. GORDON
17 CHIEF UNITED STATES DISTRICT JUDGE
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